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Table of Contents

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I. Introduction

This Article discusses important developments in West Virginia oil and gas law between August 1, 2022, and July 31, 2023. The Article is divided into two parts. The first part discusses common law developments in both state and federal courts. The second part discusses developments in legislation and regulation.

II. Judicial Developments

First, this section on judicial developments discusses two cases decided by the West Virginia Supreme Court of Appeals. Then, it discusses a West Virginia case decided by the United States Court of Appeals for the Fourth Circuit. The cases are presented in chronological order as the decisions were handed down by each of the courts.

A. The West Virginia Supreme Court of Appeals

1. Collingwood Appalachian Minerals III, LLC v. Erlewine

In *Collingwood Appalachian Minerals III, LLC v. Erlewine*,[1] the West Virginia Supreme Court of Appeals, in a 4-1 decision,[2] reversed and remanded a decision by the Circuit Court of Wetzel County and held that, where (1) an assessor has illegally created separate assessments for a taxpayer's surface and mineral interests in the same tract of land, (2) the taxpayer fails to pay taxes on either assessment so that the assessments are delinquent at the same time, and (3) both assessments are sold to separate tax sale purchasers, the purchaser of the surface assessment has no due process or statutory grounds upon which to challenge the validity of the sale of the mineral assessment to the other tax sale purchaser.[3] The Court also held that inclusion of the phrase "same land" in reference to the grantor's source of title in the deed, along with a general exception provision, were sufficiently clear so that a deed conveyed only those oil and gas interests acquired by the deed specifically referenced as the grantor's source of title and did not convey oil and gas interests the grantor acquired from other sources.[4]

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1. 248 W. Va. 615, 889 S.E.2d 697 (2023).
2. Chief Justice Elizabeth D. Walker wrote the opinion for the Court. Justice John A. Hutchison filed a separate opinion, concurring in part and dissenting in part, from the Court's judgment.
3. 889 S.E.2d at 704.
4. *Id*. at 705.

In 1909, J.E. Huff conveyed a 135-acre tract of land to James W. Sivert, excepting and reserving "one-half of all the oil and gas royalty."[5] Starting in 1930, the assessor created two tax assessments under Sivert's name: one for the 135-acre tract of land and the other for the oil and gas interest he acquired in the same deed from Huff.[6] In 1944, Sivert conveyed the tract of land to Joseph and Myrtle Rogers but excepted and reserved "one fourth of all the oil and gas royalty."[7] The following year, Sivert conveyed his remaining oil and gas interest to Joseph Palmer.[8] By separate deeds in 1945, Osburn Dunham acquired the interests of the Rogerses and Palmer in the tract of land and he continued to pay the taxes assessed under two separate tax assessments (one for the 135-acre tract of land he acquired from the Rogerses and one for the oil and gas interests he acquired from the Rogerses and from Palmer).[9]

In 1968, Dunham conveyed to Russell F. Stiles "'the same land' the Rogerses conveyed to Mr. Dunham 'by deed bearing the date the 8th day of September, 1945,'" but his deed provided: "There is reserved and excepted from this conveyance all exceptions and reservations contained in all prior deeds."[10] Following the 1968 deed, Dunham's oil and gas assessment was changed by the assessor from "1/2" to "1/4" and Stiles had two interests assessed under his name, one for the 135-acre tract of land and one for his oil and gas interest in the same tract.[11]

In 1988, Stiles failed to pay the taxes assessed against either the assessment for the 135-acre tract or the assessment for his oil and gas interest.[12] The following year the sheriff sold the 135-acre tract to Richard Erlewine and Stiles's oil and gas interest to Trio Petroleum Corporation and Waco Oil & Gas Company (collectively, "***Trio/Waco***") and, on April 1, 1991, the county clerk issued separate tax deeds to Erlewine and Trio/Waco.[13] In 1992, Dunham failed to pay the taxes assessed against his

5. *Id*. at 700. The Court noted that the parties in the case, and the circuit court, did not dispute that the oil and gas interests described in the various deeds as "oil and gas royalty" were interests in the oil and gas in place rather than nonparticipating royalty interests. *Id*. at 699, n. 2. The Court also noted that ownership of Huff's oil and gas interest was not at issue in the case. *Id*. at 700, n. 5.

6. *Id*. at 700.

7. *Id*.

8. *Id*.

9. *Id*.

10. *Id*.

11. *Id*. at 700-01.

12. *Id*. at 701.

13. *Id*.

oil and gas interest and, following a second tax sale by the sheriff, Trio/Waco received a tax deed from the county clerk for this interest in 1995.[14]

Following the three tax deeds, Erlewine paid taxes assessed against the 135-acre tract and Trio/Waco paid taxes assessed against the two separate oil and gas assessments.[15] At some point in time, Collingwood Appalachian Minerals III, LLC, Collingwood Appalachian Minerals I, LLC, and Oxy USA Inc. (collectively, "***Collingwood***") acquired Trio/Waco's oil and gas interests.[16] In 2020, Erlewine filed suit against Collingwood and Trio/Waco in the Circuit Court of Wetzel County, alleging that the 1991 tax deed to Trio/Waco was void *ab initio* because the assessor had illegally created two separate assessments for Stiles's surface and oil and gas interests and that the 1995 tax deed to Trio/Waco was void *ab initio* on the grounds that Dunham had no oil and gas interest that could have been assessed because he had not retained any oil and gas interest in the 1968 deed.[17] The circuit court granted summary judgment in favor of Erlewine, relying primarily on *Orville Young, LLC v. Bonacci*,[18] where the West Virginia Supreme Court of Appeals had invalidated a tax sale based upon a duplicate tax assessment; Collingwood and Trio/Waco appealed.[19]

Collingwood and Trio/Waco raised two arguments: first, on the question of the validity of the 1991 tax sale, that the tax deed for Stiles's oil and gas interest was valid because Stiles failed to pay any taxes under either assessment, thereby exposing both assessments to sale for delinquent taxes; and second, on the question of the construction of the 1968 deed, that Dunham had excepted and reserved a one-fourth interest in his deed to Stiles by means of reference to "all exceptions and reservations contained in all prior deeds."[20]

On the first issue, the Court rejected the circuit court's framing of the issue as being whether the assessor was permitted to separately assess Stiles's interest in the 135-acre tract of land and the oil and gas underlying the same tract, even though the Court recognized that it has previously held that where a taxpayer's interest in the same land has been charged under two assessments, the State is only entitled to one tax payment and that tax

14. *Id*.
15. *Id*.
16. *Id*. at 701, n. 7.
17. *Id*.
18. 246 W. Va. 26, 866 S.E.2d 91 (2021).
19. 899 S.E.2d at 701-02.
20. *Id.* at 704

deeds made pursuant to void assessments are void.[21] Instead, the Court reframed the question as "whether the separate, unauthorized taxation of a mineral estate invalidates a tax deed conveying it when the owner became delinquent on it *and* the tax assessed for the rest of his property interest."[22] In light of this reframed question, the Court distinguished this case from *Bonacci* and its predecessors because, unlike the taxpayer in *Bonacci*, Stiles had paid no taxes for 1988.[23] In the face of Stiles's complete failure to pay his taxes, the separate tax sales and the resulting severance of Stiles's oil and gas interest from his interest in the 135-acre tract by the two tax deeds issued by the county clerk "proved harmless to [Stiles] who subjected the entire property to a tax sale when he paid no taxes," even though the separate assessments clearly run counter to the statutory provisions of W. Va. Code § 11-4-9, under which the assessor may not separately assess an unsevered mineral interest.[24] Further, the Court held that the "harmless," although unauthorized, action by the assessor, sheriff, and county clerk was merely an "irregularity, error or mistake,"[25] for purposes of the statutory provisions for setting aside a tax deed set forth in W. Va. Code § 11A-3-63.[26] The Court reasoned that the resulting tax deed could only be invalidated by the delinquent taxpayer under one of several statutory protections, but that there are no statutory grounds under which a third party who is not related to the delinquent taxpayer may challenge a tax deed, relying upon a legislative declaration that the statutory protections shield "the due process rights of owners of real property," but not tax sale purchasers.[27] Finding that Erlewine had raised no due process concerns or statutory rights, and noting that more than 30 years had passed since the 1991 tax deeds were issued, the Court held that the 1991 tax deed to Trio/Waco should not be set aside, emphasizing that "the finality and predictability of the tax sale are the State's primary concerns."[28]

On the second issue, the Court held that the 1968 deed in which Dunham conveyed to Stiles a "tract of land"[29] described as containing 135 acres and

21. *Id*. at 702.
22. *Id*.
23. *Id*. at 703.
24. *Id*. at 702-03.
25. *Id*. at 703.
26. *Id*. at 703-04.
27. *Id*.
28. *Id*. at 704.
29. *Id.* at 707.

"being the same land conveyed to [Dunham] by [the Rogerses]"[30]"by deed bearing the date the 8th day of September, 1945"[31] and which further provided that "[t]here is reserved and excepted from this conveyance all exceptions and reservations contained in all prior deeds"[32] conveyed the 135-acre property and a one-fourth oil and gas interest, which Dunham had acquired in the deed from the Rogerses, but that it did not convey the other one-fourth oil and gas interest that Dunham owned at the same time that he had acquired from Palmer.[33] Specifically, the Court held that the 1968 deed was unambiguous and that the use of the phrase "same land" in the deed's back reference to Dunham's source of title together with the general exception language found in the deed were sufficient to clearly demonstrate Dunham's intention to retain ownership of the oil and gas interest that he had acquired from sources other than the Rogerses.[34]

Justice Hutchison filed a separate opinion, concurring in part and dissenting in part from the Court's opinion, in which he expressed his disagreement with the Court's handling of the duplicate assessment of Stiles's interest in the 135-acre tract and his oil and gas interest in the same tract and stated that he would have held that the 1991 tax deed to Erlewine conveyed all interests assessed in Stiles's name, and not just his interest in the surface.[35]

2. Equitrans, L.P v. Pub. Serv. Comm'n of W. Va.

In *Equitrans L.P. v. Pub. Serv. Comm'n of W. Va.*,[36] the West Virginia Supreme Court of Appeals held that the Public Service Commission of West Virginia ("PSC") had properly exercised its jurisdiction over a natural gas interstate pipeline company, Equitrans, L.P., and affirmed the PSC's order that Equitrans must permit a natural gas utility company, Hope Gas, Inc., to connect a natural gas field tap to one of Equitrans's gathering lines in order to provide natural gas service to a utility customer.[37]

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30. *Id*. at 706.
31. *Id.* at 700.
32. *Id.*
33. *Id.* at 705.
34. *Id*. at 705.
35. *Id*. at 705-10.
36. __ W. Va. __, 885 S.E.2d 584 (2022). Justice William R. Wooton delivered the Court's opinion. Justice Tim Armstead filed a separate opinion, concurring in the Court's judgment. Justice C. Haley Bunn, deeming herself disqualified, did not participate in the Court's decision, and was replaced by Judge William J. Sadler of the Ninth Judicial Circuit Court. The author's law firm represented Hope Gas, Inc. in this case.
37. 885 S.E.2d at 586.

In 2019, Equitrans sought approval from the Federal Energy Regulatory Commission ("FERC") to abandon and sell its gathering facilities, including the gathering line identified as "L. No. H-13087."[38] FERC approved Equitrans's application after FERC determined that it had no authority to reject it since FERC had no jurisdiction over gathering facilities.[39] At the same time that Equitrans was seeking FERC's approval to divest itself of its gathering facilities, Ronald and Ashton Hall asked Hope Gas to establish natural gas service at their residence in Reader, West Virginia, which required Hope Gas to install a new gas meter since there was an existing tap at the Halls' location.[40] Hope Gas denied the Halls' request because Equitrans had itself denied Hope Gas's request to re-establish a service connection at the Halls' location from L. No. H-13087.[41] After the denial of service, the Halls filed a complaint with the PSC against Hope Gas.[42] The PSC then added Equitrans as a respondent to the Halls' complaint, but Equitrans objected, arguing that the PSC had no jurisdiction over its gathering facilities.[43] An administrative law judge disagreed and found that the PSC had jurisdiction over L. No. H-13087 because Equitable Resources, the former parent company of Equitrans, had consented to PSC jurisdiction in a previous PSC proceeding in which Randall Crawford, Equitable Resources's senior vice president and president of midstream and distribution, had submitted an affidavit which stated, in part, that neither Equitable Resources nor any of its affiliates "shall discontinue service to any distribution system customer served on any of the isolated sections of the Equitable utility distribution system in West Virginia, … and that they shall make service available to all future applicants who would be entitled to natural gas or transportation service from such isolated distribution facilities under the statues and applicable regulations to the same extent as if a separation of properties had not taken place."[44] Equitrans was an affiliate or subsidiary of Equitable Resources at the time that this affidavit was submitted.[45]

Over Equitrans's objections, the PSC adopted the administrative law judge's finding that it had jurisdiction over Equitrans's gathering

38. *Id*. at 586-87.
39. *Id*. at 587.
40. *Id.*
41. *Id*.
42. *Id*.
43. *Id.*
44. *Id*. at 587-88.
45. *Id*. at 588.

facilities.[46] Equitrans appealed, arguing that the PSC could not exercise jurisdiction over its gathering facilities because the PSC had been divested of any such jurisdiction by a legislative rule[47] that provided that gathering facilities are neither "public utilities" nor "intrastate pipelines."[48] The respondents argued that the PSC had jurisdiction for three reasons: (1) under the rule in *Boggs v. Pub. Serv. Comm'n of W. Va.*,[49] Equitrans was operating as a public utility despite the legislative rule to the contrary; (2) the gathering line could be properly characterized as an "intrastate pipeline" under West Virginia Code § 24-3-3a; and (3) Equitrans was bound to accept the PSC's jurisdiction because of the affidavit previously submitted by Equitable Resources, its former parent company.[50] The Court agreed with the respondents' first argument and affirmed the PSC's jurisdiction over Equitrans's gathering facilities.[51]

In reviewing the statutory foundations for the PSC's jurisdiction, the Court noted that the legislative rule in question had been promulgated pursuant to the PSC's authority in West Virginia Code § 24-3-3a(c), which provides, "For reasons of safety, deliverability or operational efficiency the commission may, in its discretion, by rule or order, exclude from the requirements of this section any part of any pipeline *solely* dedicated to

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46. *Id*.

47. Equitrans argued that West Virginia Code of State Rules § 150-16-2.10 divested the PSC of its jurisdiction over the gathering facilities because that legislative rule provided: "The term 'gathering facilities' shall include all pipelines and related facilities used to collect the gas production of one (1) or more wells for the purpose of moving such production from the well(s) into the facilities of an interstate pipeline, a utility, or an intrastate pipeline. For purposes of these rules, gathering facilities shall not be considered either public utilities or intrastate pipelines."

48. 885 S.E.2d at 588.

49. 154 W. Va. 146, 174 S.E.2d 331 (1970). In *Boggs*, the Court held that "[w]here the transmission line of a public utility has been used directly to serve retail rural consumers over a long period of time, such use constitutes a dedication of that line to the public service and such facility will continue to be so dedicated and the owner thereof will continue to operate as a public utility unless and until permission is obtained from the Public Service Commission to terminate such status." *Id*., Syl. Pt. 3, 154 W. Va. at 146, 174 S.E.2d at 332. In reaching this conclusion, the *Boggs* Court relied upon *Clarksburg Light & Heat Co. v. Pub. Serv. Comm'n of W. Va.*, Syl. Pt. 5, 84 W. Va. 638, 100 S.E. 551 (1919), where the Court held that "[w]henever any business or enterprise becomes so closely and intimately related to the public, or to any substantial part of a community, as to make the welfare of the public, or a substantial part thereof, dependent upon the proper conduct of such business, it becomes subject for the exercise of regulatory power of the state."

50. 885 S.E.2d at 588.

51. *Id*.

storage, or gathering, or low pressure distribution of natural gas," and this statute "says nothing of lines that serve mixed purposes."[52] According to the Court, in light of this statutory authority, and the ample evidence in the record that L. No. H-13087 is a "mixed-use line performing both gathering services and distribution of natural gas to rural consumers via main line field taps," and that the line had "served this dual purpose for several decades," the PSC lacked the power to exempt the line from the requirements of that section, "much less to divest itself of jurisdiction over this line."[53]

Having found that the PSC had not divested itself of jurisdiction over L. No. H-13087 by legislative rule, the Court held that "[b]ecause the line was historically (and continues to be) used to serve rural consumers, it is dedicated to public service under *Boggs*" and that the line would remain under PSC jurisdiction "until [the PSC] relinquishes such jurisdiction or the line is no longer dedicated to public service."[54]

Justice Armstead filed a separate opinion, concurring in the Court's judgment, but rejected the Court's statutory analysis and its reliance on *Boggs*, arguing that W. Va. Code 24-3-3a is inapplicable to the line in question, because Equitrans' line is not an intrastate pipeline used to transport natural gas in intrastate commerce nor is it an interstate pipeline with excess capacity that is being used to transport gas in intrastate commerce, and Equitrans is not a local distribution company that sells natural gas for ultimate consumption.[55] Justice Armstead criticized the Court's application of *Boggs* as equally inapplicable, emphasizing that *Boggs* addressed "the transmission line of a public utility," and that Equitrans is not a "public utility" and its line is not a "transmission line."[56] Instead of the Court's reasoning, Justice Armstead based his conclusion on the prior PSC matter in which Equitable Resources had filed its affidavit regarding continued PSC jurisdiction over some of its facilities and would have affirmed the PSC's actions on this basis instead.[57]

52. *Id*. at 589 (emphasis in original).
53. *Id*. at 589-90.
54. *Id*. at 591.
55. *Id*. at 591-93.
56. *Id*. at 593.
57. *Id*. at 594-95.

B. Federal Courts

1. Corder v. Antero Res. Corp.

In *Corder v. Antero Res. Corp.*,[58] the United States Court of Appeals for the Fourth Circuit considered a consolidated appeal of eleven cases in which the United States District Court for the Northern District of West Virginia entered summary judgment in favor of the landowners. The district court held that Antero Resources Corporation had improperly deducted post-production costs when it calculated the royalties payable under various oil and gas leases, but also dismissed the landowners' claims for fiduciary duty, fraud, and punitive damages.[59] The Fourth Circuit, in a 2-1 decision, affirmed in part, and vacated in part, the district court's decision and remanded the case for further proceedings.[60]

At issue were the royalty clauses of three different groups of oil and gas leases covering lands in Doddridge and Harrison Counties, West Virginia.[61] In the first group, all of which were granted in the late 1970s or early 1980s, the royalty clauses were silent on the allocation of post-production costs.[62] In the second group, the royalty clauses had been modified to prohibit any post-production cost deductions by a settlement agreement between some of the landowners and Antero in 2015 which resolved a state court partition action.[63] In the third group, the leases contained a "Market Enhancement Clause," which provided as follows:

> It is agreed between the Lessor and Lessee that, notwithstanding any language herein to the contrary, all oil, gas or other proceeds accruing to the Lessor under this lease or by state law shall be without deduction, directly or indirectly, for the cost of producing, gathering, storing, separating, treating, dehydrating, compressing, processing, transporting, and marketing the oil, gas and other products produced hereunder to transform the product into marketable form; however, any such costs which result in enhancing the value of the marketable oil, gas or other products

58. 57 F.4th 384 (4th Cir. 2023). Chief Judge Roger L. Gregory wrote the Court's opinion. Circuit Judge Stephanie D. Thacker filed a separate opinion, concurring in part, and dissenting in part. The author's law firm represented Antero Resources Corporation in this case.

59. *Id*. at 388.

60. *Id*. at 387.

61. *Id*. at 388-89.

62. *Id*. at 389.

63. *Id*. at 390.

> to receive a better price may be deducted from Lessor's share of production so long as they are based on Lessee's actual cost of such enhancements. However, in no event shall Lessor receive a price that is less than, or more than, the price received by Lessee.[64]

The gas produced by Antero was separated and measured and then gathered into either the ETC Bobcat Pipeline, which transported unprocessed gas for sale in downstream markets, or a pipeline to the Sherwood Gas Processing Plant, operated by MarkWest Liberty Midstream & Resources, where the gas would be processed into Y-Grade natural gas liquids and then either sold from the plant or moved to MarkWest's fractionation plant in Pennsylvania where the Y-Grade NGLs would be further processed into products such as ethane, propane or butane and then sold.[65] The gas processing at Sherwood also produced residue gas, mostly methane, that would be sold either at nearby "in-basin" markets or transported to more-distant "out-of-basin" markets.[66] When calculating royalties under the leases, Antero used a work-back method, deducting expenses associated with processing, fractionating, and transporting the NGLs, as well as expenses associated with transporting the residue gas, beyond the "in-basin" markets to the more-distant "out-of-basin" markets, to reach a wellhead value upon which royalties were calculated.[67]

The landowners originally filed suit against Antero in state court, but Antero removed the case to the federal district court.[68] After the landowners filed a second amended complaint, the district court granted Antero's motion to dismiss the landowners' fiduciary duty, fraud, and punitive damage claims because the claims had not been pled with sufficient particularity, the fraud claims were barred by the "gist of the action" doctrine under West Virginia law, and the landowners had not pled an independent tort that could support the punitive damages claim.[69] The district court also granted Antero's motion for judgment on the pleadings and entered judgment in Antero's favor on any landowner claims that arose prior to the 2015 settlement agreement.[70] But, after the close of discovery,

64. *Id*.
65. *Id*. at 388-89.
66. *Id*. at 389.
67. *Id*. at 390.
68. *Id*. at 391.
69. *Id*.
70. *Id*.

the district court denied Antero's motion for summary judgment on the remaining breach of contract claims and granted, in part, the landowners' competing summary judgment motion.[71] In reaching its decision, the district court held that none of the leases permitted the deduction of post-production costs in the calculation of royalties because none of the royalty clauses satisfied the three-prong test set forth in *Tawney v. Columbia Natural Resources, LLC*,[72] under which post-production costs can be deducted only if the lease (1) "expressly provide[s] that the lessor shall bear some part of the costs incurred between the wellhead and the point of sale," (2) "identify with particularity the specific deductions the lessee intends to take from the lessor's royalty," and (3) "indicate the method of calculating the amount to be deducted from the royalty for such post-production costs," because the lease language was either silent on deductions or, in the case of the Market Enhancement Clause, the language was too ambiguous to satisfy the second prong of the *Tawney* test.[73] After the parties agreed to the entry of a final judgment, Antero and the landowners filed separate appeals to the Fourth Circuit.[74]

The Fourth Circuit rejected Antero's arguments that the *Tawney* test did not apply to the leases and held that, regardless of whether a lease royalty clause is based upon proceeds or value, West Virginia law does not permit the deduction of post-production costs unless the *Tawney* test is satisfied; however, the Fourth Circuit disagreed with the district court and determined that the Market Enhancement Clause satisfied the *Tawney* test.[75] As a result, the Fourth Circuit affirmed in part and vacated in part the district court's summary judgment against Antero. The Fourth Circuit also affirmed the district court's decision to dismiss the landowners' fiduciary duty, fraud, and punitive damages claims.[76]

In determining that the *Tawney* test applied to all of Antero's leases, the Fourth Circuit noted that although *Wellman v. Energy Resources, Inc.*,[77] a decision by the West Virginia Supreme Court of Appeals regarding post-production cost deductions that pre-dated *Tawney*, specifically addressed "proceeds" leases, the *Tawney* test was not limited to "proceeds" leases and

71. *Id*.
72. 219 W. Va. 266, 633 S.E.2d 22 (2006).
73. 57 F.4th at 391.
74. *Id*. at 392.
75. *Id*.
76. *Id*.
77. 210 W. Va. 200, 557 S.E.2d 254 (2001).

also applied to "value" leases as well.[78] The Fourth Circuit also rejected Antero's argument that the *Tawney* requirements should only apply until the gas is rendered marketable, and not through to the ultimate point of sale, even though the Fourth Circuit recognized that the West Virginia cases are not entirely clear on this point, with *Wellman* and *Tawney* referring to the "point of sale," *SWN Prod. Co. v. Kellam*[79] referring to the "marketable product rule" and "first rendered marketable," and *Leggett v. EQT Prod. Co.*[80] criticizing the "point of sale" approach.[81] But, absent a clear rejection of the *Wellman*/*Tawney* "point of sale" approach by the West Virginia Supreme Court of Appeals, the Fourth Circuit decided to continue following that rule.[82]

In its most significant disagreement with the district court, the Fourth Circuit determined that the Market Enhancement Clause satisfied the *Tawney* test and that its language unambiguously permitted Antero to deduct actual and reasonable costs incurred after the product was rendered marketable so long as those costs enhanced the value of the marketable product.[83] On this point, the case was remanded so that the district court could determine which products Antero sold, when those products became marketable, and whether the post-production costs deducted by Antero were incurred before or after the products became marketable.[84]

Finally, the Fourth Circuit affirmed the district court's decision that the landowners had not pled their claims for breach of fiduciary duty and fraud with sufficient particularly so as to satisfy the requirements of Rule 9(b) of the Federal Rules of Civil Procedure and that, having dismissed those claims for that reason, the district court had correctly dismissed the punitive damages claim because there was no independent, intentional tort allegedly committed by Antero that could support a claim for punitive damages since all that was left were breach of contract claims.[85] Circuit Judge Thacker

78. 57 F.4th at 392-96. In *Corder*, Antero distinguished "proceeds" leases, being those in which the royalty clause is based upon "'the price received by the Lessee from the sale' of gas" from "value" leases, where the royalties are calculated " 'at the well' or 'at the wellhead,' based on the 'value' of the gas, the 'net amount realized by Lessee…from the sale,' of gas, or the 'gross proceeds received from the sale of [natural gas] at the prevailing price for gas." *Id*. at 392.

79. 875 S.E.2d 216 (W. Va. 2022).

80. 239 W. Va. 264, 800 S.E.2d 850 (2017).

81. 57 F.4th at 396-97.

82. *Id*. at 397.

83. *Id*. at 398-401.

84. *Id*. at 400-01.

85. *Id*. at 401-04.

also filed a separate opinion in which she concurred in part and dissented in part from the Fourth Circuit's opinion, stating that she would have affirmed the district court's decision that the Market Enhancement Clause did not satisfy the *Tawney* test.[86]

III. Legislative and Regulatory Developments

A. Legislative Enactments

1. House Bill 3110

House Bill 3110 amended West Virginia Code § 11-13A-5a(a) to attribute 3/4 of 1% of oil and gas severance tax up to a limit of $1,200,000 to be used by the Office of Oil and Gas in the Department of Environmental Protection to regulate the oil and gas industry.[87]

West Virginia Code § 22-6-2 was also amended to increase the yearly fee for operators who own wells that produce tiered levels of natural gas.[88] West Virginia Code § 22-6-2(c)(11) requires operators of wells that produce an average of 250,000 cubic feet or more of natural gas to pay $350 for each of its first 400 producing wells.[89] West Virginia Code § 22-6-2(c)(12) requires operators of wells that produce between 250,000 cubic feet and 60,000 cubic feet of gas per day to pay $75 per well on its first 400 wells.[90] West Virginia Code § 22-6-2(c)(13) required operators whose wells produce an average of 60,000 cubic feet to 10,000 cubic feet to pay an oversight fee of $25 for each of its first 4,000 wells.[91]

2. Senate Bill 162

In Senate Bill 162, the West Virginia Legislature enacted West Virginia Code § 20-1-22 to authorize the director of the Division of Natural Resources to lease state-owned pore spaces underneath state-owned such as state forests, natural and scenic areas, and wildlife management areas, but prohibiting leasing pore space under state parks.[92] Additionally, the statute allowed the director to issue leases after a competitive bidding process.[93]

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86. *Id*. at 404-05.
87. W. VA. CODE ANN. § 11-13A-5a (West).
88. W. VA. CODE ANN. § 22-6-2 (West).
89. *Id*.
90. *Id*.
91. *Id*.
92. W. VA. CODE ANN. § 20-1-22 (West).
93. *Id*.

B. Regulatory Changes

1. Senate Bill 350

Senate Bill 345 updated West Virginia Code of State Rules § 110-1J-1, *et seq.*, relating to the valuation of producing and reserve oil, natural gas liquids, and natural gas for ad valorem property tax purposes.[94]

94. W. VA. CODE R. § 110-1J-1.